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STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	**08/10/06**	Bill No:	**AB 2715**
Tax:	**Sales and Use Tax** **Special Taxes** **Property Tax**	Author:	**Runner**
Related Bills:			

This analysis will only address the bill's provisions that impact the Board.

BILL SUMMARY

Among other things, this bill is intended to clarify that state tax lien information can be transmitted electronically to a County Recorder or the Secretary of State.

ANALYSIS

Current Law

Under existing law, in general, on the day a tax becomes due and payable but remains unpaid, a perfected and enforceable state tax lien is created for the amount due plus interest, penalties, and other costs. The lien attaches to real and personal property of a tax debtor by operation of law; nothing needs to be done to perfect the lien.

State tax liens are subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code. Specifically, Government Code Section 7171 allows a notice of state tax lien to be recorded or filed in any county or with the Secretary of State any time after the creation of a state tax lien. The recording or filing of the notice establishes a public record of the existence of the state tax lien against all real and personal property belonging to the tax debtor.

Under existing law, Article 3 (commencing with Section 27279) of Chapter 6 of Part 3 of Division 2 of Title 3 of the Government Code, the County Recorder is authorized to record a lien, including a digital image, filed by a state agency. Article 6 (commencing with Section 27390) of the same Chapter, known as the Electronic Recording Delivery Act of 2004 (Act of 2004), expanded and revised the County Recorder's ability to establish an electronic records system. The Act of 2004 specifically exempted Section 27279 so that state agencies could continue to electronically transmit lien filings.

Proposed Law

This bill would amend Section 7171 of the Government Code to clarify that state agencies may electronically transmit notices of state tax lien, and all documents that affect or relate to those liens, to a County Recorder or the Secretary of State.

In General

In addition to the legal provisions, the Board of Equalization (Board) has adopted administrative policies in the Compliance Policy and Procedures Manual regarding tax liens. Board policy is to routinely record a notice of state tax lien for accounts with delinquent amounts of $2,000 or more in the appropriate county(ies):

- 180 days after an amount, if sufficient, becomes delinquent on a determination or redetermination, or
- 180 days after issuance of a billing for an amount due on a return filed without payment, or with a partial payment, or for penalty and interest because of late payment, or
- 180 days after a successor's billing is issued

The Board must mail a preliminary notice to the taxpayer at least 30 days before filing a lien with the County Recorder or the Secretary of State. The notice must specify the following: (1) the statutory authority for filing the lien; (2) the earliest date on which the lien may be recorded; and (3) the remedies available to the taxpayer to prevent the filing of the lien.

COMMENTS

1. **Sponsor and Purpose.** According to the author's office, the provisions of this bill regarding state tax liens are sponsored by the County Recorders Association of California (CRAC). The CRAC is seeking to clarify and ensure that state agencies, namely the Franchise Tax Board, are able to record lien related documents electronically and efficiently by using the process in place prior to the Act of 2004. The CRAC states that the Act of 2004 created ambiguity because approval of the creation of an electronic recording system to receive electronic information from private entities or state governmental entities was needed by "resolution of the board of supervisors and system certification by the Attorney General."

2. **Currently, the Board does not transmit state tax liens electronically, nor are liens issued automatically.** The Board uses a tax collection system and evaluates taxpayer accounts on an individual basis to determine the most effective collection actions. Notices of state tax lien, and all documents related to such liens, are created using electronic documents but the information is transmitted to the County Recorder or Secretary of State on a manual basis. Generally, the Board retains the recorded tax lien information in the tax collection system and in a paper file.

COST ESTIMATE

This bill would not impact the Board's administrative costs.

REVENUE ESTIMATE

This bill would not impact state's revenues.

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This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.